

115TH CONGRESS  
1ST SESSION

# S. 1408

To enhance effective prosecution and defense in courts-martial, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 22, 2017

Mrs. ERNST (for herself and Mrs. GILLIBRAND) introduced the following bill;  
which was read twice and referred to the Committee on Armed Services

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## A BILL

To enhance effective prosecution and defense in courts-martial, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. ENHANCEMENT OF EFFECTIVE PROSECUTION**

4 **AND DEFENSE IN COURTS-MARTIAL AND RE-**

5 **LATED MATTERS.**

6 (a) ADDITIONAL ELEMENT IN PROGRAM FOR EFFEC-  
7 TIVE PROSECUTION AND DEFENSE.—Subsection (a)(1) of  
8 section 542 of the National Defense Authorization Act for  
9 Fiscal Year 2017 (Public Law 114–329; 130 Stat. 2126;  
10 10 U.S.C. 827 note) is amended by inserting before the

1 semicolon the following: “or there is adequate supervision  
 2 and oversight of trial counsel and defense counsel so de-  
 3 tailed to ensure effective prosecution and defense in the  
 4 court-martial”.

5 (b) ASSIGNMENT OF CIVILIAN EMPLOYEES TO SU-  
 6 PERVISE LESS EXPERIENCED JUDGE ADVOCATES IN  
 7 PROSECUTION AND DEFENSE.—Such section is further  
 8 amended—

9 (1) by redesignating subsections (c) and (d) as  
 10 subsections (d) and (e), respectively; and

11 (2) by inserting after subsection (b) the fol-  
 12 lowing new subsection (c):

13 “(c) ASSIGNMENT OF CIVILIAN EMPLOYEES TO SU-  
 14 PERVISE LESS EXPERIENCED JUDGE ADVOCATES IN  
 15 PROSECUTION AND DEFENSE.—

16 “(1) ASSIGNMENT AUTHORIZED.—The Sec-  
 17 retary concerned may assign the function of super-  
 18 vising and overseeing prosecution or defense in  
 19 courts-martial by less experienced judge advocates to  
 20 civilian employees of the military department con-  
 21 cerned or the Department of Homeland Security, as  
 22 applicable, who have extensive litigation expertise.

23 “(2) STATUS AS SUPERVISOR.—A civilian em-  
 24 ployee assigned to supervise and oversee the pros-  
 25 ecution or defense in a court-martial pursuant to

1       this subsection is not required to be detailed to the  
 2       case, but must be reasonably available for consulta-  
 3       tion during court-martial proceedings.”.

4       (c) PILOT PROGRAMS ON PROFESSIONAL DEVELOP-  
 5       MENTAL PROCESS FOR JUDGE ADVOCATES.—Subsection  
 6       (d) of such section, as redesignated by subsection (b)(1)  
 7       of this section, is amended—

8               (1) in paragraph (1), striking “establishing”  
 9               and all that follows and inserting “a military justice  
 10              career track for judge advocates under the jurisdic-  
 11              tion of the Secretary.”;

12              (2) by redesignating paragraph (4) as para-  
 13              graph (5); and

14              (3) by inserting after paragraph (3) the fol-  
 15              lowing new paragraph (4):

16              “(4) ELEMENTS.—Each pilot program shall in-  
 17              clude the following:

18                      “(A) A military justice career track for  
 19                      judge advocates that leads to judge advocates  
 20                      with military justice expertise in the grade of  
 21                      colonel, or in the grade of captain in the case  
 22                      of judge advocates of the Navy, to prosecute  
 23                      and defend complex cases in military courts-  
 24                      martial.

1           “(B) The use of skill identifiers to identify  
2 judge advocates for participation in the pilot  
3 program from among judge advocates having  
4 appropriate skill and experience in military jus-  
5 tice matters.

6           “(C) Guidance for promotion boards con-  
7 sidering the selection for promotion of officers  
8 participating in the pilot program in order to  
9 ensure that judge advocates who are partici-  
10 pating in the pilot program have the same op-  
11 portunity for promotion as all other judge advo-  
12 cate officers being considered for promotion by  
13 such boards.

14           “(D) Such other matters as the Secretary  
15 concerned considers appropriate.”.

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